



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

O.A.No.1350/00813/2014

Date of Order: 01/08/2016

GORA CHAND PAL  
V/S  
POSTS

Counsel for Applicant	:Mr.D.Banerjee, Advocate
Counsel for Respondents	:Ms.R.Basu, Advocate

**O R D E R**

**JUSTICE V.C.GUPTA, JM:**

Heard Mr.D.Banerjee, the learned Counsel for the Applicant and Ms.R.Basu, the learned Counsel appearing for the Respondents and perused the records.

2. This OA has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"To cancel set aside and/or rescind the anti dated order being No. B/G-85 dated 08.05.2013 passed by the Senior Superintendent of Post Offices, the respondent No.2, thereby treating the period from 26.12.2012 to 04.02.2013 as unauthorized absent of the applicant from the duty and treating he said period as "Dies-Non" as well as the so called order of the Appellate Authority dated 19.07.2013 holding that the action taken by the Divisional head is justified.

3. The brief facts of this case are that the applicant fell ill and applied for fifteen days commuted leave w.e.f. 11.12.2012 to 25.12.2012 on medical ground but not in prescribed proforma. He continued on medical leave till 4<sup>th</sup> of February, 2013 and reported

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to duty on 5<sup>th</sup> February, 2013 by producing the unfit and fitness medical certificates but not in the prescribed format. In fact a show cause notice was issued to the applicant wherein he was instructed to appear before the CMOH on 18.12.2012 for second medical opinion but the applicant did not appear. He was allowed to resume his duty on 5<sup>th</sup> February, 2013 without questioning the correctness of the fitness certificate produced by him. The applicant in his reply specifically denied to have received any such notice to appear before the CMOH on 18.12.2012, and, therefore, could not have appeared before the CMOH. An order was, therefore, passed on 08.05.2013 treating the period from 26.12.2012 to 04.02.2013 as 'dies non'. Admittedly, no departmental proceedings were initiated for the alleged unauthorized absence of the Applicant. As it appears, the impugned order dated 08.05.2013 was passed for the reason that the applicant was unable to inform the reason of his absence and not submitted his leave application in time for the period commencing 26.12.2012 to 04.02.2013. It is the specific case of the applicant that he was forced to remain on leave due to his illness.

4. Counter and rejoinder have been filed.

5. Copy of the letter dated 18.12.2012 has not been brought on record nor it has been stated when such letter was issued to the applicant and when he has received the same.



Therefore, it cannot be presumed that any such letter was ever issued to the applicant. No doubt the employer has the power to proceed departmentally against any employee for remaining absent unauthorizedly. Admittedly, no such action was taken in this case. It is important to note here that the period of the alleged unauthorized absence from 11.12.2012 to 25.12.2012 has not been treated as dies non.

Though for that period medical certificate on prescribed format has not been filed, the applicant remained on leave due to his illness has not been questioned/doubted by the Respondents. But it is the case of the Respondent-Department that the unfit and fitness certificates produced by the applicant were not in the prescribed format. Mere irregularity in the medical certificate i.e. the certificates were not in the prescribed format cannot be a ground to treat the period as dies non which has serious consequence in the service career of the applicant especially, when the authorities themselves granted the medical leave for the period from 11.12.2012 to 25.12.2012 on the basis of such certificates despite the fact was not on prescribed format and according to the Respondents the applicant failed to appear before the CMOH on 18.12.2012 for second medical opinion.

6. In view of the above, we are of the considered view that the impugned order dated 08.05.2013 is not sustainable in the touch stone of judicial scrutiny which is accordingly quashed and



the Respondents are directed to regularize the leave of the applicant, according to law.

7. With the aforesaid observation and direction this OA stands disposed of. No costs.

(Ms.Jaya Das Gupta)  
Administrative Member

(Justice V.C.Gupta)  
Judicial Member

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